



Civil Division

July 3, 2006

JMF:vlg  
DJ # 61-6-154

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R  
Harold G. Bailey, Jr.  
GARVEY SCHUBERT BARER  
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Re: Barges - CDA  
Samson Tug & Barge v. United States  
D. Alaska, Civil No. A03-006 CV

Dear Buzz:

FILE COPY  
Please consider this letter to be a response, in part, to your recent Notice for the United States to produce F.R.C.P 30(b)(6) witnesses on August 15, 2006 in Seattle. As we discussed, the requests are far broader than your earlier Notice, certainly not a supplementation of it, and are very burdensome. (A copy of your Notice is attached).

We feel the testimony sought is, for the most part, not likely to lead to the discovery of any admissible evidence. Further, and again as we discussed, witnesses generally could never be produced who would know the current whereabouts of all persons involved in many, let alone all, of the issues you specified, especially after the passage of so much time. This Request also implicates restrictions contained in the Privacy Act, 5 U.S.C. 552a, regarding the disclosure of addresses, etc.

Nevertheless, as agreed, we will endeavor to produce responsive witnesses to testify regarding non-protected subjects, probably where they are now stationed or now reside, if they are retired. No witnesses will be produced on August 15<sup>th</sup>, however, a date you specified without prior consultation as to my trial schedule.

"Exhibit G"  
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We will instead begin to make responsive individuals available on dates we agree will be convenient for all concerned. We have also agreed that, if you want to depose any of these people also as individual percipient witnesses, you will try to do so, to the extent possible, on the same day that they are produced in response to your 30(b)(6) Notice.

With this said, our first two witnesses, Jeff Eastby and John Seaton, will be produced on July 12, 2006 at SDDC's offices in Seattle beginning at 1300. They will testify regarding MTMC procedures in the Pacific Northwest in the relevant years.

Let me be very clear, given the number of topics you have listed we could have to produce in excess of twenty witnesses. They are located all across the United States, and some are presently overseas. This will not be an easy, or quick, undertaking, and will likely exceed the limitations on the number of depositions you can take under F.R.C.P. 30. If there is any way to narrow your requests, please do so as soon as possible.

Finally, I anticipate receipt of your proposal for a further extension in our pre-trial dates. If you want longer than November 1, 2006 to produce plaintiff's expert report(s), we will need to choose dates into early January, given my expert's schedule.

Very truly yours,

JEANNE M. FRANKEN  
Trial Attorney  
West Coast Office  
Torts Branch, Civil Division

Enclosure